

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Developing a Unified Intercarrier Compensation)	CC Docket No. 01-92
Regime)	

COMMENTS OF NEX-TECH, INC.

Nex-Tech, Inc. (“Nex-Tech”), by its undersigned attorneys, hereby submits its comments on the intercarrier compensation reform plan (the “Missoula Plan”) filed with the Federal Communications Commission (“FCC” or Commission”) on July 24, 2006 by the National Association of Regulatory Utility Commissioners’ Task Force on Intercarrier Compensation (“NARUC Task Force”). As further detailed below, Nex-Tech believes the Missoula Plan represents a good start in creating solutions to the many complex issues surrounding intercarrier compensation. However, Nex-Tech believes that the Missoula Plan should be modified to accommodate the unique position rural competitive local exchange carriers (“CLECs”) have in the telecommunications industry.

Nex-Tech submits that rural CLECs should be defined as Covered Rural Telephone Companies (“CRTCs”) in Track 3 rather than in Track 1 due to the nature of the markets they serve. Rural CLECs should also be permitted to participate in the Missoula Plan’s Restructure Mechanism (“RM”) revenue, which is an access recovery element designed to replace intercarrier revenues lost through rate reductions that are not recouped through subscriber line charge (“SLC”) increases. Assigning rural CLECs to Track 1 and excluding them from the receipt of RM revenues would dramatically change the competitive landscape for rural telecommunication services, and would be disastrous for rural CLECs like Nex-Tech.

In support hereof, Nex-Tech states as follows:

I. Background

A. Nex-Tech, Inc.

Nex-Tech is a rural CLEC providing advanced telecommunications services, including local telephone service, in fourteen (14) rural communities in Northwest Kansas, and it has been designated as an eligible telecommunications carrier (“ETC”) for the receipt of universal service support. Nex-Tech is a wholly-owned subsidiary of Rural Telephone Service Company, Inc., an independent telephone cooperative based in Lenora, Kansas. Nex-Tech is based in Hays, Kansas, with branch offices in nine (9) other rural communities. Nex-Tech has over 125 employees. Since 2000, Nex-Tech has committed to capital expenditures in excess of \$30,000,000 to overbuild and upgrade its telecommunications networks in rural Northwest Kansas.

Nex-Tech has made great strides in its commitment to providing advanced telecommunication services that allow its customers to “level the playing field” with other businesses in larger urban communities, and it plays an important role in the economic development of the communities it serves. Nex-Tech is often asked by other communities to bring its advanced services to them, and its customers are rural Kansans previously “left behind” by AT&T and Embarq. Nex-Tech has done exactly what the Telecommunications Act of 1996 intended; it has brought competition to underserved rural areas, and inaugurated high quality innovative services to rural areas comparable to those available in urban locations.

B. Benefits of Rural Competitive Local Exchange Carriers

Nex-Tech is a member of the Rural Independent Competitive Alliance (“RICA”). RICA is a national organization that represents the interests of facilities-based CLECs that provide service in rural, high-cost areas of the country long neglected by the large incumbent telephone companies. RICA members are affiliated with rural telephone companies, and pursue a strategy

of providing superior service and advanced telecommunications capabilities large incumbents have failed to provide in rural underserved locations. RICA members provide facilities-based services to entire communities in comparatively high-cost areas. The makeup of those communities are comparable to those served by typical rural incumbent local exchange carriers (“ILECs”), i.e., a high proportion of residential subscribers and no large businesses. Through the efforts of RICA members, broadband and other communications services are available to most of their customers.

Maintaining a competitive environment for telecommunication services is vital for rural Kansas communities. A case in point is Nex-Tech’s experience in Osborne, Kansas. Nex-Tech began offering local telephone service, high-speed Internet, cable television and other advanced services in Osborne, Kansas in 2003. The Osborne community is an example of a previously underserved area in Kansas where the incumbent provider, Embarq, had not made high-speed Internet available to the community. To address this shortcoming and meet demand for such service, Nex-Tech overbuilt Osborne with a fiber-to-the-home (“FTTH”) solution, which community leaders believe has leveled the playing field to enable their businesses to compete favorably with urban communities, and lure residents to the area.

Indeed, Nex-Tech’s FTTH overbuild was instrumental in keeping Osborne Industries, a local manufacturing firm, in the community. Osborne Industries, a company that has been in operation for over three decades, was considering relocating due to the lack of broadband availability. After Nex-Tech’s FTTH overbuild, which brought broadband service to citizens and businesses in Osborne, the company decided to remain in Osborne and expand their product line. Osborne Industries now supports 112 employees, and reaches markets throughout the United States, Canada, Europe, and Asia.

Another example of previously underserved communities are Almena and Norton, Kansas, where Nex-Tech started providing services, including high-speed Internet, in 2000. Nex-Tech completed facility overbuilds with FTTH solutions, and it has captured 90% of the customer base in those two communities. Clearly, rural America needs and wants the high quality and innovative services provided by rural CLECs, such as Nex-Tech, as rural communities are routinely ignored by large incumbent providers who concentrate their efforts on more lucrative urban areas. Accordingly, they should receive the same treatment under the Missoula Plan as rural incumbent carriers that serve the same types of communities.

II. Intercarrier Compensation

Nex-Tech provides interstate switched access service at either the rate of the incumbent with which it competes, or at the NECA rate, pursuant to Part 61 of the FCC's rules.¹ Intrastate access is generally priced in the same manner. Subsequent to adoption of these tariffing rules, the Commission reduced the NECA rates in the MAG proceeding and offset the reduction for NECA members with additional universal service funds.² Over RICA's objection, no such compensation for revenues taken by the MAG Plan was provided for rural CLECs.

The Missoula Plan, which proposes to again revise the FCC's intercarrier compensation rules, is now before the Commission as a result of the NARUC Task Force effort. As explained above, rural CLECs most closely resemble their affiliated rural ILECs in all characteristics relevant and material to determining rate regulation. However, under the Missoula Plan, all CLECs, regardless of whether they serve rural or urban markets, are treated as if they are Regional Bell Operating Companies ("RBOCs") or other large urban carriers and assigned to

¹ 47 C.F.R. § 61.1 *et seq.*

² See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent LEC and IXC*s, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001).

Track 1. While RICA actively participated in the NARUC Task Force meetings, its views regarding the treatment of rural CLECs was not incorporated into the version of the Missoula Plan filed with the FCC.

Should the Missoula Plan be adopted as proposed with rural CLECs treated as being in Track 1, rather than being CTRCs in Track 3, such carriers would be at a significant disadvantage to the rural ILECs with which they compete. Incumbent carriers would be able to receive more revenue than rural CLECs from the favorable Track 3 rates, which the incumbents could use to fend off CLECs encroaching into their market areas. Rural CLECs would be disadvantaged as their ability to increase market penetration and serve high-cost rural areas would be constrained as a result of the unequal rate structures. Moreover, with regard to the communities ignored by the RBOCs, rural CLECs would not have the large customer base the RBOCs have to draw upon to support the expansion or improvement of service in those areas. The treatment of rural CLECs as CTRCs in Track 3 would enable them to continue their mission of bringing services such as high speed Internet to areas that do not currently have such capabilities as a result of those areas being low service priorities for the RBOCs.

It is critically important to rural CLECs' ability to survive and grow that the exemption in the current rules for rural CLECs from the requirements to reduce their rates to RBOC levels be maintained, and that any mechanism to offset the revenue taken through a unified and uniform rate prescription fully incorporate rural CLECs. The Missoula Plan relegates rural CLECs to Track 1 treatment, and excludes them from receiving RM revenues to compensate them for the reductions in prices they receive for the use of their rural telecommunications infrastructure. Rural CLECs, by definition, operate in a much different environment than urban CLECs. Typically, rural CLECs achieve the very high penetration rates necessary to support overbuilding

because the incumbent has failed to maintain and update its facilities, and has not provided any local contact points in small towns and rural areas. In essence, the rural CLECs become the *de facto* incumbent. Accordingly, it is only appropriate and equitable for rural CLECs to be treated as CTRCs in Track 3 and receive RM revenue so that they can continue to expand service and bring innovative and high quality services to historically underserved rural markets.

III. Conclusion

In summary, the regulatory environment that exists today has allowed Nex-Tech to invest in excess of \$30,000,000 in telecommunications infrastructure over the past six years to serve rural markets in Northwest Kansas. This investment is further enhanced by its employment of over 125 Kansans, and the payment of taxes supporting local services and schools. The incentive and financial capability for Nex-Tech to make additional future investments and continue its growth in employment in rural Kansas will be eliminated under the proposed Missoula Plan. Consumer choice, competition and the public interest will best be served if, under the Missoula Plan, rural CLECs are treated as Track 3 Covered Rural Telephone Companies and receive RM revenues, rather than assigned Track 1 and denied just compensation for the use of their rural networks.

Respectfully submitted,

_____/s/_____
James U. Troup
Tony S. Lee
McGuireWoods LLP
1050 Connecticut Avenue, N.W.; Suite 1200
Washington, DC 20036
Tel: (202) 857-1700
Fax: (202) 857-1737
Email: jtroup@mcguirewoods.com
tlee@mcguirewoods.com

Date: October 25, 2006